

The Law Offices of Geng & Zhang PLLC
Fuqiang Zhang (FU 0281)
39-07 Prince Street, Suite 3E
Flushing, NY 11354
Tel.: 718-321-7130
Fax.: 718-569-6878
Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
YANG LI and CHUN ZHOU LI,

Plaintiffs,

- against -

YA YI CHENG, PING YANG, and LUCKY GRAND
HUNAN CHINESE RESTAURANT, INC., OPERATING
UNDER THE TRADE NAME "LUCKY GRAND
HUNAN CHINESE RESTAURANT",

**AMENDED REPLY AFFIDAVIT OF
FUQIANG ZHANG IN FURTHER
SUPPORT OF DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT**

Civil Action No.: 10-4664 (JBW) (CLP)

Defendants.

-----x

I, Fuqiang Zhang, being duly sworn, depose and says:

1. I am a member of the Law Offices of Geng & Zhang PLLC and am duly admitted to practice before this Honorable Court.
2. I am the attorney for the Defendants in the above-entitled action, and I am familiar with all the facts and circumstances heretofore had herein.
3. I make this amended affidavit in reply to Plaintiffs' amended opposition and in further support of Defendants' motion for summary judgment.
4. Despite the fact that Plaintiffs' attorney served Plaintiff's amended opposition on this office on September 7, 2011, the actual document was not received by the undersigned until September 13, 2011. Ergo, compliance with the Court's order for service of the amended reply by September 14, 2011 was not possible under the circumstances.

5. The primary basis for Defendants' Motion for Summary Judgment is that Defendant Lucky Grand Hunan Chinese Restaurant Inc. (herein after "Lucky") is not an "employer" under the Fair Labor Standard Act (hereinafter "FLSA") where Defendant Lucky does not generate \$500,000.00 in gross annual revenue. Without a claim that is brought under the FLSA, Plaintiffs lack the requisite standing to bring this case before this honorable Court.
6. In their amended opposition, Plaintiffs repeatedly ALLEGE that Defendants have not provided sufficient proof to demonstrate that Defendant Lucky is not an "employer" under the FLSA based on Defendants' "own self-interested affidavits, tax documents, and summaries of supposed sales". However, Plaintiffs' failed to provide any evidence to substantiate such assertion.
7. To date, Defendants have cooperated with Plaintiffs' discovery demands in its every aspect. Most of the documents such as the tax returns, banking statements and credit card statements produced by Defendants are all documents generated by independent third parties with no interest in this case. Thus, it is perplexing to Defendants as to Plaintiffs' basis for describing such documents as "self-serving." In addition, Defendants were ready and willing to cooperate with Plaintiffs on their demand for depositions. However, despite several attempts by Defendants' attorney schedule said depositions, Plaintiffs' attorney has failed to provide Defendants with any proposed dates.
8. In response to Plaintiffs' specific allegation over the discrepancy of Plaintiff Yang Li's wages as reported on Defendant Lucky's tax returns, said discrepancy was already explained by Defendants' attorney in a letter dated July 14, 2011 as a simple accounting error made by Defendant Lucky's accountant. The fact that Plaintiffs are bringing this issue before the Court in their amended opposition is just a mere attempt to create further

confusion in this case. A copy of said letter with attachments is attached hereto as Exhibit A.

9. Plaintiff Yang Li makes further allegations within her affidavit with respect to the alleged hours she worked, the alleged salary she received, and the alleged cash not reported by Defendant Lucky. NONE of these allegations are supported by ANY evidence. Defendants have provided Plaintiffs with any and all documents in their possession that pertained to the operation of Defendant Lucky. It is now Plaintiffs' burden to demonstrate, if any, the insufficiency of Defendants' production.

WHEREFORE, based on the above statements, the undersigned respectfully request the Court to grant the Defendants' motion for summary judgment, and to grant any further relief that may be deemed just and proper.

Dated: September



Fuqiang Zhang

Sworn to before me this

15 day of September 2011

NOTARY PUBLIC

CHONGYI MAO
NOTARY PUBLIC-STATE OF NEW YORK
No. 02MA6222536
Qualified in Kings County
My Commission Expires May 24, 2014

EXHIBIT A

The Law Offices of Geng & Zhang PLLC

39-07 Prince Street, Suite 3E
Flushing, NY 11354
Tel: (718) 321-7130
Fax: (718) 321-7135
Email: info@law-gz.com

July 14, 2011

VIA FACSIMILE 212 - 349-6599
and FIRST-CLASS MAIL
Mr. Philip L. Sutter, Esq.
Law Offices of Vincent S. Wong
39 East Broadway, Suite 304
New York, NY 10002

Re: Yang Li and Chun Zhou Li v. Ya Yi Cheng, Ping Yang, and
Lucky Grand Hunan Chinese Restaurant, Inc.
U.S.D.C., E.D.N.Y.
Civil Action No. 10-Civ-4664 (Weinstein)

Dear Mr. Sutter:

In response to your letter dated July 14, 2011, I have consulted with my client's accountant with respect to this "discrepancy" that you had alleged. According to the consultant, the discrepancy is simply a clerical mistake with no discernable impact on neither of our clients' interests.

To explain in detail, based on the timesheets provided by Defendant Ya Yi Cheng, Plaintiff Yang Li worked during the month of March, April and May with a monthly wage of \$1,160.00. Thus, her total income at Defendant Lucky Grand Hunan Chinese Restaurant Inc. for 2010 would be \$3,480.00. I have attached a copy of Plaintiff Yang Li's 2010 W-2 as proof.

Your "discrepancy" can be explained by the attached copy of Amended Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (NYS-45-X) which my client's accountant had filed for the SECOND quarter (April – June of 2010). On this amendment, Plaintiff Yang Li's income, in the amount of \$2,320.00, for the month of April and May of 2010 was properly updated for the second quarter.

However, this \$2,320.00 was NOT properly updated on the FOURTH quarter return, specifically on the "Total Annual" section, as you had pointed out to me over the telephone. Thus, I can see how you were confused by the discrepancy within the reported numbers.

I hope the attachments will satisfy your concern. Should you have any further questions, please do not hesitate to contact my office.

Thank you for your attention in this matter.

Very truly yours,
The Law Offices of Geng & Zhang PLLC



Chongyi Mao

CM/hs

Enc.

44444

For Official Use Only
OMB No. 1545-0008

a Employer's name, address, and ZIP code LUCKY GRAND HUNAN CHINESE REST 2347 86TH ST BROOKLYN NY 11214		c Tax year/Form corrected 2010 /W-2	d Employee's correct SSN 607-25-4130
		e Corrected SSN and/or name (Check this box and complete boxes f and/or g if incorrect on form previously filed.) Complete boxes f and/or g only if incorrect on form previously filed ►	<input type="checkbox"/>
		f Employee's previously reported SSN	
b Employer's Federal EIN 27-1393059		g Employee's previously reported name	
		h Employee's first name and initial LI	Last name YANG Suff.
Note: Only complete money fields that are being corrected (exception: for corrections involving MQGE, see the Instructions for Forms W-2c and W-3c, boxes 5 and 6).			
Previously reported		Correct information	
1 Wages, tips, other compensation 1160.00		1 Wages, tips, other compensation 3480.00	
3 Social security wages 1160.00		3 Social security wages 3480.00	
5 Medicare wages and tips 1160.00		5 Medicare wages and tips 3480.00	
7 Social security tips		7 Social security tips	
9 Advance EIC payment		9 Advance EIC payment	
11 Nonqualified plans		11 Nonqualified plans	
13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>		13 Statutory employee <input type="checkbox"/> Retirement plan <input type="checkbox"/> Third-party sick pay <input type="checkbox"/>	
14 Other (see instructions)		14 Other (see Instructions)	
		12a See Instructions for box 12	
		12b	
		12c	
		12d	
State Correction Information			
Previously reported		Correct information	
15 State NY		15 State NY	
Employer's state ID number 27-1393059		Employer's state ID number 27-1393059	
16 State wages, tips, etc. 1160.00		16 State wages, tips, etc. 3480.00	
17 State income tax 0.00		17 State income tax 0.00	
Locality Correction Information			
Previously reported		Correct information	
18 Local wages, tips, etc. 1160.00		18 Local wages, tips, etc. 3480.00	
19 Local income tax		19 Local income tax	
20 Locality name NY City		20 Locality name NY CITY	

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Copy D - For Employer

Department of the Treasury
Internal Revenue Service

NYS-45-X

(5/10)

**Amended Quarterly Combined Withholding,
Wage Reporting, and Unemployment Insurance Return**

UI Employer registration number 1111111 1

If seasonal employer, mark an X in the box

Withholding identification number 271393059 1

This return should be completed to amend a previously filed return. A separate return must be completed for each quarter to be amended. Mark only one box to indicate the quarter and enter the tax year.

Employer legal name:

LUCKY GRAND HUNAN CHINESE REST

Jan 1 - Mar 31	Apr 1 - Jun 30	X July 1 - Sep 30	Oct 1 - Dec 31	Tax year
1	2		3	4

Part A - Unemployment insurance (UI) information

	Previously reported amounts	Correct amounts	Difference	UI SK
1. Total remuneration paid this quarter	10013.00	12333.00	2320.00	
2. Remuneration paid this quarter to each employee in excess of the taxable limit since January 1	0.00	0.00	0.00	
3. Wages subject to contribution (subtract line 2 from line 1)	10013.00	12333.00	2320.00	
4. Enter your tax rate (see Instructions) 4.1 %				
5. UI contributions due (multiply line 3 x line 4) 5a	410.53	5b	505.65	
6. Overpayment to be applied to outstanding liabilities and/or refunded (if line 5a is greater than 5b, enter the difference here)				95.12
7. Additional Unemployment Insurance amount due (if line 6a is less than 5b, enter the difference here)				

Part B - Withholding tax (WT) information

	Previously reported amounts	Correct amounts (an amount equal to or greater than zero must be entered on each line)	WT SK
8. New York State tax withheld			
9. New York City tax withheld			
10. Yorkers tax withheld			
11. Total tax withheld (add lines 8, 9, 10)			
12. If you marked line 20b on your previous quarter's Form NYS-45, enter the amount from line 20 of that form			
13. Form NYS-1 payments made for the quarter you are amending			
14. WT payments made with previously filed Forms NYS-45 (line 19) and/or Form NYS-45-X (line 19) for the quarter you are amending			
15. Total payments (add amounts on lines 12, 13, and 14)			
16. Overpayment, if any, shown on previously filed Forms NYS-45 (line 20) and/or Form NYS-45-X (line 18)			

This is a
scannable form;
please file
the original.

Complete Parts C and D on
back of this form, if required.



51014315

17. Subtract line 16 from line 15
18. Overpayment to be applied to outstanding liabilities and/or refunded (if line 17 is greater than 11, enter the difference here)
19. Additional withholding tax amount due (if line 17 is less than 11, enter the difference here)
20. Additional payment due (add lines 7 and 19; make one remittance payable to NYS Employment Taxes). An overpayment of either tax cannot be used to offset amounts due on the other tax

95.12

Sign your return; I certify that the information on this return is to the best of my knowledge and belief true, correct, and complete. If you are using a paid preparer or a payroll service, complete the section on the back.

Taxpayer's signature		Signer's name (please print)	Title
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Telephone number	Date	For office use only			
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Postmark

Received date

AI SI

NYS-45-X (5/10) (back)

UI Employer registration number

Withholding identification number

1111111 1 271393059 1

Part C - Amended employee wage and withholding information

Amended quarterly employee/payee wage reporting information (Do not use negative numbers. See instructions on filing amended wage and withholding information.)			Annual wage and withholding totals	
a Social security number	b Last name, first name, middle initial	c UI total remuneration/gross wages paid this quarter	d Gross federal wages or distribution (see instructions)	e Total NYS, NYC, and Yonkers tax withheld
607254130	YANG, LI	2320.00		

Part D - Form NYS-1 corrections/additions

Use Part D only for corrections/additions to the quarter being reported in Part B of this return. All corrections to withholding information originally reported on Form(s) NYS-1 filed for the quarter must be reported here by completing columns a, b, c, and d. All additional withholding information not previously reported on Form(s) NYS-1 must be reported here by completing only columns c and d. Lines 8 through 11, *Correct amounts* column, on the front of this return, must reflect these corrections/additions. See Form NYS-45-X-1, *Instructions for Form NYS-45-X*.

a Original last payroll date reported on Form NYS-1, line A (MMDD)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (MMDD)	d Correct total withheld



Note: Complete Form DTF-85, Business Tax Account Update, to report changes in federal identification number/withholding ID number, ownership, business name, business activity, telephone number, owner/officer/partner/responsible person information, or changes that affect any other tax administered by the Tax Department. For questions regarding additional changes to your unemployment insurance account, call the Department of Labor at (518) 485-8689 or 1 888 899-8810.



If you are using a paid preparer or a payroll service, the section below must be completed:

51014322

Paid preparer's use	Preparer's signature BARRY ZHANG CPA	Telephone number 718 463 1101	Date	Mark an X if self-employed	Preparer's SSN or PTIN P00298573
	Preparer's firm name (or yours, if self-employed) Barry Zhang CPA	Address 136-20 38TH AVE 9G Flushing, NY 11354		Preparer's EIN	
Payroll service name			Payroll service's EIN		

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 7 and 19 to ensure proper credit of your payment.
- Enter your Withholding ID number on your remittance.
- Make remittance payable to **NYS Employment Taxes**.
- Enter your telephone number below your signature.
Need help or forms? See the Instructions.

Mail to:

NYS EMPLOYMENT TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
Yang Li and Chun Zhou Li,

Plaintiffs,
- against -

Civ No. 10-4664 (JBW) (CLP)

Ya Yi Cheng, Ping Yang, and Lucky Grand Hunan
Chinese Restaurant, Inc., operating under the trade
name "Lucky Grand Hunan Chinese Restaurant",

AFFIRMATION OF
SERVICE

Defendants.

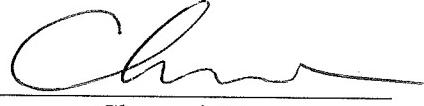
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I, Chongyi Mao, affirm under the penalty of perjury:

I am an attorney duly licensed to practice law in the State of New York. I am not a party to this action, over 18 years of age and reside in Brooklyn, New York. On September 15, 2011, I caused to be served a true copy of Amended Reply Affidavit of Fuqiang Zhang in Support of Defendant's Motion for Summary Judgment, by placing these papers in the U.S. Mail, postage prepaid, addressed to plaintiffs' attorney at:

Vincent S. Wong, Esq.
Law Offices of Vincent S. Wong
Attorneys for Plaintiffs
39 East Broadway, Suite 304
New York, NY 10002

Dated: Flushing, NY
September 15, 2011


Chongyi Mao